



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Adrian Supply Co.

File: B-238791

Date: June 29, 1990

Bob Stormberg for the protester.
Vasio Gianulias, Esq., and Vicki E. O'Keefe, Esq., Department of the Navy, for the agency.
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the agency terminated an improper aggregate award of all line items to a firm under a total small business set-aside and determined it would resolicit for certain line items on an unrestricted basis instead of awarding these line items on the basis of multiple awards to the respective low bidder for each line item under the original solicitation, protest is sustained where the agency's reason for canceling and resoliciting is not compelling.

DECISION

Adrian Supply Co. protests the decision of the Department of the Navy to resolicit for certain line items on an unrestricted all-or-none basis after terminating an improper aggregate award of all line items to General Switchgear, Inc., under invitation for bids (IFB) No. N62922-89-B-6594, issued for the purchase of equipment for a backup electrical system at the military hospital in Guam. Adrian argues that because it submitted the low bid for two of these line items, the agency should have awarded it contracts for these items under the IFB's multiple award provision.

We sustain the protest.

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The solicitation, issued on October 17, 1989, as a total small business set-aside, requested firms to provide prices for the following five contract line items (CLIN) and quantities: CLIN 0001-Switchgear (1); CLIN 0002-Batteries and Charger (1); CLIN 0003-Transformers (20); CLIN 0004-Fault Indicators (20); and CLIN 0005-Contractor Data Requirements (1). The solicitation stated that a contract would be awarded to the responsible bidder whose bid, conforming to the solicitation, would be most advantageous to the government, considering only price and price-related factors as specified in the solicitation. The only evaluation factor included in the solicitation was a clause allowing the agency to make multiple awards, i.e., individual awards for the items or combination of items which would result in the lowest aggregate cost to the government, including assumed administrative costs of \$250 for each contract awarded.

Ten bids were received at the time of bid opening on November 16. General Switchgear submitted the low bid of \$76,500 for CLIN 0001. Werner Palm submitted the low bid of \$9,301 for CLIN 0002. Adrian submitted the low bid of \$145,280 for CLIN 0003 and \$3,340 for CLIN 0004. With respect to CLIN 0004, Adrian specifically noted on its bid schedule that because no small business manufactures this item, it would furnish this item from a large business.

The agency, apparently believing that under the solicitation it could award a single contract to the low aggregate bidder for all line items rather than making multiple awards to the low bidder for each individual line item, awarded a single contract for \$269,508 to General Switchgear, the low aggregate bidder, for all five line items on February 21. On March 5, Adrian filed a protest with our Office challenging the aggregate award to General Switchgear. Adrian essentially argued that consistent with the terms of the solicitation, the agency should have made multiple awards and awarded the individual line items to the respective low bidders.

Subsequent to the filing of the protest, the agency determined that the bids were not properly evaluated in accordance with the multiple award provision and hence, the aggregate award to General Switchgear was improper. Therefore, the agency terminated for the convenience of the government General Switchgear's contract for CLINs 0002 through 0005, and stated that it would resolicit for these items on an unrestricted all-or-none basis.

While Adrian agrees with the agency's decision to terminate, it challenges the agency's decision to resolicit for CLINs 0003 and 0004 instead of awarding it contracts for these line items.^{1/}

The agency's decision not to make award to Adrian for these CLINs means that the agency's intention is to cancel the IFB with respect to these CLINs. Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting agency must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1) (FAC 84-53); Bonded Maintenance Co., Inc., B-235207, July 14, 1989, 89-2 CPD ¶ 51. Here, the agency principally argues that it canceled CLINs 0002 through 0004 and intends to resolicit for these items rather than making multiple awards to the respective low bidders under the original solicitation in order to achieve compatibility among the items. However, under the circumstances, we find that this is not a compelling reason to cancel CLINs 0003 and 0004.

Specifically, the Competition in Contracting Act of 1984^{1/} requires agencies to evaluate sealed bids based solely on the factors specified in the solicitation and to award a contract to the responsible source whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and price-related factors included in the solicitation. 10 U.S.C. § 2305(b)(1) and (3) (1988). In this case, since the solicitation permitted multiple awards, the agency was required to select that

^{1/} As stated above, General Switchgear submitted the low bid for CLIN 0001, and the agency determined that because of substantially completed performance and excessive termination costs, it would not be in the best interest of the government to terminate this line item. We have no basis to disagree, and Adrian has not shown otherwise. With respect to CLIN 0002, Adrian argues that award should have been made to Werner Palm under the multiple award provision; however, Werner Palm has not filed a protest. We will therefore not consider the matter further because Adrian has no direct economic interest in the award to that firm. See Bid Protest Regulations, 4 C.F.R. § 21.0(a)/(1990). Finally, although the agency terminated the award of CLIN 0005, it does not intend to resolicit for this line item because the contractor data requirements were included in the IFB's technical specifications, and the agency determined that it does not need to list these requirements as a separate line item.

combination of bids which resulted in the lowest overall cost to the government--the only evaluation factor stated in the solicitation. Adrian Supply Co.--Recon., 66 Comp. Gen. 367 (1987), 87-1 CPD ¶ 357.

By including the multiple award clause in the solicitation as the sole evaluation factor for award, the agency knew or should have known that unless one responsible bidder submitted the low price for each line item (thereby justifying a single award of all line items to that bidder), the agency was required to make a number of awards, specifically to the respective bidder which submitted the low bid for the individual line item. Clearly, the agency contemplated the possibility, and necessity, of awarding four separate contracts for CLINS 0001 through 0004.^{2/} We find no evidence in the record to support the agency's present claim for compatibility since the record indicates that the agency never had any concerns with the compatibility of the line items so long as the particular line items offered by the responsible low bidder met the technical specifications as outlined in the solicitation. In fact, the agency even stated that the IFB specifications require items which, properly manufactured, would be compatible. The agency has not explained why any additional compatibility requirement beyond that already contained in the specifications is needed. Indeed, the agency's concern appears to be related to ensuring coordinated shipping of the items by one party for installation at the same time. There is nothing in the record which indicates that timely delivery under multiple award contracts would not satisfy its needs. Consequently, we conclude that the agency has not offered a compelling justification for the cancellation of the line items.^{3/}

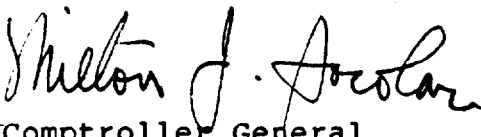
^{2/} Indeed, the record shows that each solicited item is manufactured by a different manufacturer and is subject to a separate factory production schedule.

^{3/} The agency also states that it must resolicit because the IFB improperly applied the small business size standard for CLIN 0001 to CLIN 0003 and the other items. However, the record shows that this was immaterial since the size standard for CLIN 0003 was identical to that of CLIN 0001 (750 employees) and these two CLINs' size standards would not change upon resolicitation.

Thus, since the original solicitation permitted multiple awards, the agency should have selected that combination of bids which would have resulted in the lowest overall cost to the government. Because Adrian was the low bidder on CLINs 0003 and 0004, the agency should have awarded Adrian a contract for each of these line items.^{4/}

Accordingly, we recommend that the Navy make an award of CLINs 0003 and 0004 to Adrian. Further, we find that Adrian is entitled to its protest costs. 4 C.F.R. § 21.6(d).

The protest is sustained.

for 
Comptroller General
of the United States

^{4/} The agency further argues that it must resolicit CLIN 0004 on an unrestricted basis because this line item is only manufactured by a large business and award of this item under a small business set-aside would be inappropriate. However, because resolicitation of CLIN 0004 (along with CLIN 0002) would result in a contract for less than \$25,000, CLIN 0004 could be purchased in accordance with the small business-small purchase set-aside procedures, FAR §§ 13.105 (FAC 84-28), 19.501(f) (FAC 84-56). Under such procedures, a small nonmanufacturer, like Adrian, may furnish the product of a large business. Therefore, we see no purpose in resoliciting for CLIN 0004.